SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 236

WILLIAM EVANS, MEMBER OF THE BOARD OF SUPERVISORS OF ELECTIONS OF BALTIMORE CITY, ET AL.,

Appellants,

v.

TILLYE CORNMAN, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

JURISDICTIONAL STATEMENT

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Appellants,

v.

TILLYE CORNMAN, ET AL.,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The initial opinion of the United States District Court for the District of Maryland in support of its order of October 28, 1968, preserving the status quo is reprinted at App. 1a; the opinion of the District Court granting permanent relief is reprinted at App. 4a. The initial and final opinions, the initial and final decrees, and the order

granting intervention are reprinted herewith as Appendix "A"; the opinions are not as yet officially reported.

JURISDICTION

This suit was brought under 28 U.S.C.A., §§1343, 1357, 2201, and 2202 and 42 U.S.C.A., §§1983 and 1988 to restrain orders of the Permanent Board of Registry for Montgomery County, Maryland, refusing to register two of the plaintiffs on the voting registry of the State and removing the other plaintiffs (who had, by inadvertence, been permitted to register) from the voting registry. The complaint, which prayed the convening of a three-judge District Court, sought to enjoin, and the final decree enjoined, the application to the plaintiffs of the provisions of Article I, Section 1 of the Maryland Constitution, which, as authoritatively construed by the Maryland Court of Appeals, provides that residents of reservations under the exclusive territorial jurisdiction of the federal government are ineligible for the state franchise. The final decree of the three-judge District Court enjoining enforcement of the state constitutional provisions as to the plaintiffs was entered on February 19, 1969. An order permitting the Attorney General of Maryland and the Board of Supervisors of Elections of Baltimore City to intervene as parties defendant was entered on April 10, 1969 pursuant to Motion filed on March 17, 1969, no objection thereto having been filed by plaintiffs and entry of the order having been consented to by the defendant members of the Permanent Board of Registry for Montgomery County. Notice of Appeal was filed in the District Court on April 14, 1969. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C.A., §1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Alabama Pub.*

Serv. Comm. v. Southern Ry. Co., 341 U.S. 343-44 n. 3; *Davis v. Mabry*, 380 U.S. 251; *McDonald v. Bd. of Election Commrs. of Chicago*, 22 L.Ed. 2d 739.

QUESTIONS PRESENTED

1. Does the decree of the District Court permitting and directing the extension of the state franchise and participation in state political controversy to reservations under the exclusive territorial jurisdiction of the Federal Government contravene Article I, Section 8, Clause 17 of the Constitution of the United States in the absence of consent by the Congress of the United States to such state political involvement?

2. Was the District Court correct in concluding that the Fourteenth Amendment to the Constitution of the United States, limiting state action, operated in derogation of Article I, Clause 8, Section 17 so as to empower and require the State to enfranchise residents of areas under the exclusive territorial jurisdiction of the National Government?

3. Was the District Court correct in concluding that the Equal Protection Clause required that the Plaintiffs be placed on the same footing with State residents with respect to state elections even though they remain immune from many of the burdens and responsibilities of State citizenship and hence will be preferentially empowered, through the state franchise, to impose burdens upon state residents to which they themselves cannot be required by the State to submit?

STATUTES INVOLVED

Article I, Section 1 of the Constitution of Maryland, declared unconstitutional by the District Court as applied to the named plaintiffs, reads, in pertinent part, as follows:

> "All elections shall be by ballot; and every citizen of the United States, of the age of twenty-one years,

or upwards, who has been a resident of the State for one year, and of the Legislative District of Baltimore city, or of the county, in which he may offer to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district, in which he resides, at all elections hereafter to be held in this State . . ."

Article 96, §34 of the Code of Public General Laws of Maryland, enacted by Chapter 158 of the Acts of 1953, provides, with respect to the site of plaintiffs' residence, that:

"(a) *Consent to acquisition*

The consent of the State of Maryland is hereby given in accordance with Article I, §8, clause 17 of the Constitution of the United States to the acquisition by the United States for public health purposes of the following described tract of land lying within Montgomery County:

[metes and bounds omitted]

Comprising approximately 317.7 acres as shown on plot of survey, site 1-28, 'National Institutes of Health — Montgomery County, Maryland' prepared by Maddox and Hopkins, Civil Engineers, Silver Spring, Maryland, dated January, 1948, revised May 27, 1948.

"(b) *Jurisdiction*—Exclusive jurisdiction over the parcel of land described in subsection (a) of this section shall be and the same is hereby ceded to the United States for all purposes except that the State retains the right to serve thereon all civil and criminal process of the courts of this State,[1] but the jurisdiction so

[1] It has long been clear that such a limited reservation by the State does not defeat exclusive federal jurisdiction. Art. I, Sec. 8, Cl. 17 itself makes this clear, as do federal statutes. "A cession by a State of jurisdiction . . . shall be deemed sufficient . . . notwithstanding it contains a reservation that process issued under authority of such State may continue to be served within such place." 1 Stat. 426 (1795), 33 U.S.C.A., §728, see *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525 at 533-34; *United States v. Cornell*, Fed. Case No. 14,867 (D.R.I. 1819) (Story, J.).

ceded shall not vest as to all or any portion of the said parcel of land unless and until the United States shall own it, and the jurisdiction shall continue no longer than the United States shall own such land."

STATEMENT

The present case involves the validity of Article I, Section 1 of the Constitution of Maryland, limiting the right to vote in state and local elections to "citizen[s] of the United States . . . who [have] been resident[s] of the State for one year, and of . . . the county . . . for six months next preceding the election . . .". The constitutionality of the one-year residence period provided by the State Constitution was upheld by this Court in *Drueding v. Devlin*, 380 U.S. 125, affirming 234 F. Supp. 721 (D. Md. 1964); the constitutionality of disqualifications of nonresidents and of resident aliens, who of course are fully liable for state taxes and personal exactions, has long been well established in decisions of this Court: "[i]n *W.M.C.A. v. Lomenzo*, 377 U.S. 633 . . . we treated an apportionment based upon United States citizen population as presenting problems no different from apportionments using a total population measure. Neither in *Reynolds v. Sims*[2] nor in any other decision has this Court suggested that the states are required to include aliens, transients, short-term or temporary residents or persons denied the vote for conviction of crime in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured. The decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere. . . . The difference between exclusion of all military and military-related personnel, and exclusion of those not

[2] 377 U.S. 533.

meeting a state's residence requirements is a difference between an arbitrary and a constitutionally permissible classification." *Burns v. Richardson*, 384 U.S. at 91-92 and n. 21.

The present case involves the application of the Maryland constitutional provision to twelve plaintiffs, all residents on the grounds of the National Institutes of Health. The area on which plaintiffs reside was ceded to the United States in 1953 by Article 96, Section 34 of the Code of Public General Laws of Maryland, Chapter 158 of the Acts of 1953, and was accepted by the United States, the State reserving only the right to serve its civil and criminal process on the reservation. While some of the plaintiffs had previously resided and voted in Maryland outside the federal reservation, none of them claimed an intention to retain his previous residence as a basis for allowance to him of the franchise.[3] None of the affidavits of plaintiffs contained any facts from which retention of a domicile outside the federal reservation could be found.

Ten of the twelve plaintiffs were on or about October 18, 1968 removed from the voting rolls upon discovery of the fact that they resided outside the State's jurisdiction; two of the plaintiffs were refused registration on the same ground, since it has long been established that residents of reservations under the exclusive jurisdiction of the federal government are not residents of Maryland. *Lowe v. Lowe*, 150 Md. 592, 133 A. 729 (1926); *Royer v. Board of Election Supervisors*, 231 Md. 561, 191 A. 2d 446 (1963), cert. denied 375 U.S. 921; *Tanner v. McKeldin*, No. 17,373 Eq. (Cir. Ct.

[3] The circumstances in which a Maryland resident moving on to a federal reservation may be deemed to have intended to retain his prior residence are outlined in *Walsh v. Crouse*, 232 Md. 386, 194 A. 2d 107 (1963), making clear that persons residing on federal reservations by legal compulsion do not forfeit their rights at their prior place of residence.

Frederick Co. 1953); 10 Opinions of the Attorney General of Maryland, 107 (1925); 11 Id. 120 (1926); 17 Id. 139 (1932); 36 Id. 129 (1951); 46 Id. 114 (1961); 47 Id. 103 (1962).

On October 24, 1968, plaintiffs instituted the present action, praying declaratory and injunctive relief against removal or exclusion from the voting rolls of the named plaintiffs and praying the convening of a three-judge court and the issuance of a temporary restraining order. Pursuant to 28 U.S.C.A., §2284 (a), the Attorney General of Maryland was advised of the filing of the action, and at the request of counsel for the Permanent Board of Registry for Montgomery County conducted the defense of this action. On October 25, 1968, a hearing was conducted by the three-judge court. On October 28, 1968, Chief Judge Thomsen, the District Judge to whom the application for three-judge court and temporary restraining order had been presented, issued, pursuant to 28 U.S.C.A., §2284 (3), a temporary restraining order preserving the status quo by granting temporary relief to the ten plaintiffs who had been inadvertently registered but not to the two who had unsuccessfully sought registration, the Court noting the imminence of the national election on November 5, 1968. The accompanying opinion found, notwithstanding the directly applicable *Royer* case in which this court had denied certiorari only five years earlier, a "paucity of authority" on the point at issue (App. 2a).

On January 29, 1969, the three-judge court, following further argument, rendered an opinion expressing the view that Art. I, Section 1 of the Maryland Constitution, as construed in *Royer v. Board of Election Supervisors, supra*, was invalid as applied to the plaintiffs. The opinion, which discussed none of this court's prior holdings relating to the

legal status of federal reservations, relied entirely on "implication" (App. 10a) from a dictum in *Howard v. City of Louisville*, 344 U.S. 624 and on the holding in *Carrington v. Rash*, 380 U.S. 89, a case not involving federal enclaves at all, in reaching a result which the court conceded was unsupported by and contrary to the directly applicable decisions (App. 6a). On February 19, 1969, the court signed an order in the form submitted by plaintiffs granting them the relief prayed. The defendants' prayer that entry of the order be stayed for a period of sixty days to permit the filing of a Notice of Appeal to this court and be stayed thereafter pending decision by this Court was refused, the Court explaining that "[w]e agreed upon [plaintiffs'] form of order so that the plaintiffs would not be prevented from voting this fall if there is a special election" (App. 14a). At the time, some nine months prior to November, 1969, no special election had been called; the validity of a special election called by the Maryland General Assembly by Chapter 76 of the Acts of 1969, approved April 9, 1969, is presently the subject of litigation in the state courts.

On March 17, 1969, the Attorney General of Maryland and the Members of the Board of Supervisors of Elections of Baltimore City filed a Motion to Intervene as parties defendant in this action pursuant to Rules 24 (a) (2) and 24 (b) (1) and (2) of the Federal Rules of Civil Procedure.[4] On April 10, 1969, the Permanent Board of Registry of Montgomery County having consented to intervention and no objection thereto having been filed by plaintiffs, an order was signed by the court granting the requested inter-

[4] By statute, Md. Code Ann. Art. 32A, Sec. 2 (1957), the Attorney General of Maryland is counsel to the Board of Supervisors of Elections of Baltimore City, and the Secretary of State of Maryland. He is not counsel, however, to the Permanent Board of Registry of Montgomery County, or to the Board of Supervisors of Elections of Montgomery County.

vention.[5] On April 14, 1969, the intervenors noted the present appeal.

THE QUESTIONS ARE SUBSTANTIAL

1. As a result of the unprecedented decision appealed from, a serious conflict of authority exists, in Maryland and elsewhere, as to the voting rights of residents of reservations under the exclusive jurisdiction of the federal government. The views of the United States District Court for the District of Maryland as expressed in the present case are diametrically opposed to those of the Court of Appeals of Maryland, as expressed in *Royer v. Board of Election Supervisors*, 231 Md. 561, 191 A. 2d 446 (1963), cert. denied 375 U.S. 921. They likewise are opposed to the clear expressions by this court on the subject (which the District Court did not discuss), see *Fort Leavenworth R. R. Co. v. Lowe*, 114 U.S. 525, 537, and *Surplus Trading Co. v. Cook*, 281 U.S. 647, 654-55. The continuing vitality of the views as to the juridical status of reservations under exclusive federal jurisdiction expressed in the *Fort Leavenworth* case was recognized in *Paul v. United States*, 371 U.S. 245, 263, and *Humble Oil and Refining Co. v. Waggoner*, 376 U.S. 369, 372, while the *Surplus Trading* case was cited approvingly in *Howard v. Commr. of Louisville*, 344 U.S. 624, 627, the very case on which the court below purported to rely. The court below recognized that directly pertinent authority is virtually unanimous in rejecting the result reached by the court below. See *Sinks v. Reese*, 19 Ohio St. 306, 316 (1869); *Commonwealth v. Clary*, 8 Mass. 72, 77 (1811); *Opinions of the Justices*, 42 Mass. 580 (1841); *United States v. Cornell*, Fed. Case No. 14,867 (D.R.I. 1819) (Story, J.); *Arledge v. Mabry*, 52 N.M. 303, 197 P. 2d 884

[5] The documents relating to intervention are set out as Appendix "B" hereto.

(1948); *Herken v. Glynn,* 151 Kan. 855, 101 P. 2d 946 (1940); *Royer v. Bd. of Elections, supra;* see generally 34 A.L.R. 2d 1193-1202 (1954).[6] This condition has continued to the date of filing of this jurisdictional statement. See *Langdon v. Jaromillo,* 37 U.S. L. W. 2653 (Sup. Ct. N.M. May 12, 1969).

2. The questions are of obvious general importance. See the *Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States,* (1956) Vol. I, pp. 123-26 as to the area and population of enclaves under exclusive federal jurisdiction, some of which dwarf in population the municipalities and local subdivisions within whose borders they are situated.

3. The court below plainly misinterpreted and misapplied the two Supreme Court cases upon which it relied. *Howard v. City of Louisville,* 344 U.S. 624, has never been subsequently cited by this Court. It moreover expressly reaffirmed the proposition of *Surplus Trading Co. v. Cook* that "exclusive jurisdiction . . . remains with the United States, except as modified by statute." (344 U.S. at 627). The *Howard* case held merely that a state legislature could alter the boundaries of subdivisions to include a federal reservation in an incorporated rather than unincorporated area for tax purposes since a federal statute, the Buck Act (4 U.S.C.A. §§105-10) allowed state subdivisions to impose certain taxes. The *Howard* case was merely a Buck Act case dealing with state exercise of powers expressly retro-

[6] The cases relied on by the court below as announcing a different rule, *Arapojolu v. McMenamin,* 113 Cal. App. 2d 824, 249 P. 2d 318 (1952); *Rothfels v. Southworth,* 11 Utah 2d 169, 356 P. 2d 612 (1960) and *Adams v. Londeree,* 139 W. Va. 748, 83 S.E. 2d 127 (1954) all involved construction of state statutes and did not rest on Federal constitutional grounds. All were decided by sharply divided courts. The latter two cases did not involve "constitutional" reservations such as that involved here since in both instances the state reserved concurrent jurisdiction at the time of cession.

ceded to it, as was made clear by the opinion of the Kentucky Court of Appeals in *Commissioner of Sinking Fund v. Howard*, ... Ky. ....., 248 S.W. 2d 340 (1952), affirmed by the Supreme Court. See *Mississippi River Fuel Corp. v. Cocreham*, 382 F. 2d 929, 937 n. 17 (5th Cir. 1967); *Burns v. State Bureau of Revenue*, 79 N.M. 53, 439 P. 2d 702, 703 (1968), cert. denied 393 U.S. 841, so construing the *Howard* case. It is similarly apparent that *Carrington v. Rash*, 380 U.S. 89, dealt with discrimination on grounds of employment, not nonresidence; both the *Carrington* opinion itself and *Burns v. Richardson*, 384 U.S. 73, 92 n. 21 make this clear.

4. The court below held that the state-imposed burdens to which the federal government, as a matter of policy, elected to subject plaintiffs rendered the denial of the franchise to them irrational and prohibited by the Equal Protection clause of the Fourteenth Amendment. The Equal Protection clause, which provides only that "[no] state . . . shall . . . deny to any person *within its jurisdiction* the equal protection of the laws" (emphasis added) (see *Blake v. McClung*, 172 U.S. 239, 260-61) is clearly inapplicable to the plaintiffs here, who are residents of an area expressly placed beyond the State's jurisdiction by Article I, Section 8, Clause 17 of the Constitution. The historic purpose of the "forts and dockyards" clause was to insulate vital Federal installations from interference as the result of domestic political turmoil within the states. See the account of the origins of that clause and the related clause having to do with the District of Columbia in *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 529-30 and see *The Federalist* No. 42 and 2 Story, *Commentaries on the Constitution*, Section 1219. It was recognized at the time of the state conventions at which the Constitution was ratified that one effect of it was to disenfranchise residents of "constitutional

reservations" such as the District of Columbia in the absence of reservations imposed by states in their acts of cession. See Interdepartmental Committee Report, *supra*, Vol. II, pp. 22-28 and debates therein cited. The "forts and dockyards" clause and the constitutional provisions relating to the District of Columbia have traditionally been read *in pari materia* by the federal courts. See *Paul v. United States*, 371 U.S. 245, 263 (1963) which observes "the power of Congress over federal enclaves that come within the scope of Article I, Section 8, Clause 17, is obviously the same as the power of Congress over the District of Columbia". The *Paul* case expressly reaffirms the principles of *Fort Leavenworth R.R. Co. v. Lowe*. See also *Albaugh v. Tawes*, 233 F. Supp. 576 (D. Md. 1964) affirmed 379 U.S. 27; *In Re Town of Highlands*, 22 N.Y.S. 137, 140 (Sup. Ct. 1892).

5. Even if the plaintiffs can claim the protection of the Equal Protection Clause, the classification made by the State is clearly rational as to them. While, by reason of the explicit partial retrocession of federal jurisdiction contained in the so-called "Buck Act" (4 U.S.C.A., §§101-110), the plaintiffs are subjected to state sales, income, and motor vehicle taxes, there are numerous other burdens of state citizenship to which they are not subjected. The Plaintiffs bear no part of the burden of state property taxes either directly through the ownership of taxable property or indirectly through the lease of property upon rentals predicated in part on property taxes. Even if they actually owned land within the area of federal exclusive jurisdiction, they would still be exempt. *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930); Interdepartmental Committee Report, Vol. II, p. 178. Plaintiffs are thus effectively exempt from the levy which supplies the lion's share of the revenues of local and county governments, including the

lion's share of school revenues. They are also exempt from the state property tax, which is levied for the purpose of servicing the State's bonded indebtedness pursuant to Article III, Section 34 of the Constitution of Maryland, and the various general construction loan laws and other bond bills. They are, thus, effectively exempt from bearing any part of the burden of the State's debt.

In addition, it seems altogether clear that Plaintiffs are exempt from the most basic obligation that can be imposed by any political authority: the obligation of personal service. Plaintiffs are not a part of the unorganized militia of the State referred to in Article 65, Section 5 of the Public General Laws and are not subjected to compulsory military service at the call of State authority. (That this obligation is not chimerical is suggested by the opinions of the Attorney General of Maryland to Governor Agnew dated June 3 and July 11, 1968, holding, with the occurrence of the Federal authorities, that individual members of the Army and Air Force Reserves are subject to call by the State Government as members of the unorganized militia in the event of civil emergency). It is clear that Plaintiffs are exempt from this obligation of compulsory personal service. See 16 Opinions of the Attorney General of the United States 469 (1880); *Pundt v. Pendleton*, 167 Fed. 997 (N.D. Ga. 1909); *Commonwealth v. Clary*, 8 Mass. 72 (1811); Interdepartmental Committee Report, Vol. II, pp. 184-85.

It is also clear that Plaintiffs are exempt from the State's compulsory education laws and possess no enforceable right to attend Maryland public schools, save so far as that right is provided them by agreement with state authorities. See 5 Opinions of the Attorney General of Maryland 129 (1920); 27 Opinions of the Attorney General of Maryland 116 (1942); 33 Id. 155 (1948); *Schwartz v. O'Hara Township*

School District, 375 Pa. 440, 100 A. 2d 621 (1953) and authorities cited; Interdepartmental Committee Report, Vol. I, p. 1; Vol. II, pp. 216-19 and authorities cited. In addition, Plaintiffs are exempt from state jury service (Interdepartmental Committee Report, Vol. II, p. 237), and are not subject to arrest and prosecution by state authorities for offenses committed on the Federal reservation. *Bowen v. Johnston*, 306 U.S. 19; *United States v. Unzueta*, 281 U.S. 138; *Mannix v. United States*, 140 F. 2d 250 (4th Cir. 1944); Interdepartmental Committee Report, Vol. II, pp. 105-09. They are arguably not subject to compulsory commitment in state mental institutions if found dangerous to themselves or to others. Compare *Bliss v. Bliss*, 133 Md. 61, 104 A. 467 (1918) with *Lowe v. Lowe*, 150 Md. 592, 603, 133 A. 729, 733 (1926) (Bond, C.J., concurring). See Interdepartmental Committee Report, Vol. II, p. 234, n. 55 on the practice of federal authorities in relation to this problem. Further, Plaintiffs are not subject to such other disabilities as those contained in state occupational licensing legislation, Interdepartmental Committee Report, Vol. II, p. 183; *Oklahoma City v. Sanders*, 94 F. 2d 323 (10th Cir. 1953); *Lynch v. Hammoch*, 204 Ark. 911, 165 S.W. 2d 369 (1942); 9 Opinions of the Attorney General of Maryland 164 (1924) 42 Id. 305 (1957), state minimum price fixing laws enacted subsequent to the date of cession, see *Paul v. United States*, 371 U.S. 245 (1963), and State liquor laws, see *Collins v. Yosemite Park Co.*, 304 U.S. 518 (1938). By grace of the State Legislature their children are permitted to attend the public schools, the State receiving in return payments from the Federal treasury which fall on the Nation's taxpayers at large including bona fide residents of Maryland.[7] It is

[7] The court below relied on these "impacted area" funds as a ground of its decision, thus dramatizing its *ad hoc* nature, since continuance of impacted area aid is currently the subject of sharp Congressional

clear that "in the absence of a contract with the Federal Government, the State is not obliged to provide the inhabitants of a Federal enclave with the government services that it provides for its own citizens, *Fort Leavenworth R. R. Co. v. Lowe* (1885), 114 U.S. 525; Report of Interdepartmental Committee for Study of Jurisdiction over Federal areas within the State, Part II * * *" *Mississippi River Fuel Co. v. Cocreham*, 382 F. 2d 929, 939, n. 19 (5th Cir. 1967). Plaintiffs here claim the right to vote in state and local elections including elections involving school bond issues and other education expenditures whose benefits their children will reap but whose costs Plaintiffs will be exempt from bearing. They seek power without responsibility with respect to questions involving additional appropriations that are the warp and woof of local government. They seek a voice in the election of prosecutors who cannot prosecute them for offenses committed at the place of their residence, other officials, such as Registers of Wills, who assess taxes that they are not required to pay (see Interdepartmental Committee Report, supra, Vol. II, pp. 230-36), and other officials of State government whose legislative, executive, and judicial authority over them is severely restricted.[8] In the event the decision below is upheld, the Plaintiffs will stand in a far more favorable position than true residents of Maryland, for they will be able to vote for state and local expenditures, and for candidates promising to increase them, secure in the knowledge that they will be immune from bearing the major part of these expenditures raised

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debate. The relevance of such aid was expressly denied by this Court in *Humble Oil and Refining Co. v. Waggoner*, 376 U.S. at 373.

[8] While the Assimilative Crimes Act gives the state legislature power to enact some laws applicable to plaintiffs not *ex proprio vigore* but by force of the federal policy embodied in the Federal statute where not inconsistent with Federal legislation, the authority has been narrowly restricted by supervening federal legislation governing serious offenses. The narrow scope of state authority is made clear in *United States v. Sharpnack*, 355 U.S. 286.

through an application of the State's most important and most flexible (as to rate) tax — the property tax.

The concessions to state authority made by the Buck Act were carefully designed as a *quid pro quo* for services usually rendered to residents of Federal enclaves by the states in which they visit.[9] Even foreign diplomats and consular officials are subject by usage and treaty to many state exactions as are resident aliens, but none would urge that they are entitled to the franchise on that account. No more than such persons do the Plaintiffs here owe any allegiance to the State of Maryland. Indeed, the matrix of immunity surrounding them exceeds that even of foreign nationals insofar as the state's powers to compel military service and assess property taxes are involved. Under these circumstances there is nothing irrational in any constitutional sense in the disqualification of the Plaintiffs from the franchise.

6. The careful balance between rights and responsibilities of residents of Federal enclaves should be altered, if at all, only by carefully drawn legislative enactment. The unfairness inherent in permitting persons to vote for higher local government expenditures and to elect local officials who are not liable for many local taxes and who are not subject to the authority of the persons for whom they vote is patent, cf. *Montoya v. Bolack*, 70 N.M. 196, 372 P. 2d 387, 395 (1962). It may be noted that some states, such as New

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[9] The Buck Act, significantly, expressly recites "the provisions of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any federal area." 4 U.S.C. §108. Where Congress has desired to allow residents of constitutional reservations the state franchise, it has done so by specific enactment. See 16 Stat. 399 (1871); 30 Stat. 668 (1898); 31 Stat. 1175 (Soldiers' homes); 63 Stat. 11 (1949) (Los Alamos). Interdepartmental Committee Report, Vol. II, pp. 85-93.

Hampshire, impose neither income nor sales taxes and derive no substantial benefits from the Buck Act. The most comprehensive study of the problems here at issue, the *Report of the Interdepartmental Committee for Study of Jurisdiction over Federal Areas within the States* (1956) urged solution of whatever problems do exist by retrocession of exclusive jurisdiction by the Federal government with respect to the many reservations not requiring extraterritoriality, as to which concurrent or proprietary jurisdiction is all that is required.[10] This solution, unlike that produced by the decree of the court below, would afford Plaintiffs *all* the privileges of state residents, but it would of course, strip them of their present immunities and confer on them responsibilities as well as rights, and thereby avoid the dilution of the franchise of *bona fide* residents produced by the District Court decree.

7. The decree of the District Court is unsupported by precedent, impairs the rights of *bona fide* residents of Maryland, and is violative of the exclusive control over ceded reservations confided to the federal government by the Constitution, and should be reversed.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,

ROBERT F. SWEENEY,
Deputy Attorney General of Maryland,

GEORGE W. LIEBMANN,
Assistant Attorney General of Maryland,

For Appellants.

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[10] See *Tanner v. McKeldin*, Eq. 13,373 (Cir. Ct. Fredk. Co. 1953); Interdepartmental Committee Rept., Vol. 1, pp. 70-72.

APPENDIX A

OPINION OF COURT

(Filed October 28, 1968)

In The United States District Court
for the District of Maryland

(Caption omitted)

THOMSEN, Chief Judge.

The twelve plaintiffs in this case are citizens of the United States who reside on the grounds of the National Institute of Health, a federal reservation in Montgomery County, Maryland. Prior to October 19, 1968, ten of the twelve plaintiffs were registered on the voters' registry in Montgomery County. On or about that date defendants, who are the members of the Permanent Board of Registry of Montgomery County, notified the ten that their names would be removed from the voters' registry in that County before the general election to be held on November 5, 1968, solely for the reason that they "reside on Federal property within Montgomery County and, as such, do not qualify for voting in Maryland under the State Constitution". See Article 1, section 1 of the Maryland Constitution, and *Royer v. Board of Election Supervisors for Cecil County*, 231 Md. 561, 191 A. 2d 446 (1963). For the same reason defendants have refused to register the other two plaintiffs.

Promptly after receiving such notice, plaintiffs consulted counsel, who prepared, filed and presented to me on Thursday, October 24, (1) a complaint, seeking declaratory and injunctive relief to prevent removal from the voters' registry the names of the ten plaintiffs who were registered, and to require the registration of the other two plaintiffs, and (2) a motion, supported by appropriate affidavits, for a temporary restraining order, a preliminary injunction and the convening of a three-judge court. Plaintiffs contend that the provision of the Maryland Constitution upon which defendants rely, as interpreted by the Maryland Court in *Royer*, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

At the time the suit was filed the parties entered into a stipulation: (1) that the parties would cooperate to bring on for hearing promptly the motion for preliminary injunction; (2) that pending such hearing and determination by this court of said motion, defendants would take no steps to remove from the registry the names of nine of the ten registered plaintiffs;[1] and (3) that any party might move to modify the terms of the stipulation "to the same extent which such party would be entitled had the stipulation been in the form of a temporary restraining order issued after hearing".

On the same day oral notice of the application was given to Chief Judge Haynsworth of the Fourth Circuit,[2] and Judge Haynsworth designated Circuit Judge Winter and District Judge Harvey as the two other judges to serve on the three-judge court. Since Judge Winter will be engaged during the week of October 28 in hearing cases in Richmond, a hearing in this case was held on Friday, October 25, in the late afternoon. With commendable industry, counsel for defendants prepared and filed an answer, and the Deputy Attorney General of Maryland presented a reasoned argument at the hearing.[3] By agreement of the parties the case was submitted to the Court on the complaint, the answer and certain stipulations of fact.

The case presents a grave constitutional question, on which there appears to be a paucity of authority. The decision of the question will require careful consideration and will probably affect many persons, because of the number of federal reservations within the State of Maryland. Of necessity, the case was presented to the court with minimal opportunity for preparation by counsel or by the judges. Since the case was heard on complaint, answer and

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[1] No reason for the omission of the tenth name from the stipulation was indicated at the hearing, and the court is advised that it was omitted by inadvertence.

[2] The oral notice was promptly supplemented by the customary written notice under 28 U.S.C. 2284.

[3] The notice to the Governor and the Attorney General of the State (required by 28 U.S.C. 2284(2), was acknowledged.

stipulations, a final judgment can be entered at any time, but there will be no adequate opportunity before the election on November 5 for the study and conference which the importance of the case requires.

Therefore, the three judges believe that no final judgment should be entered at this time, but that I, to whom the application was made, should consider the issuance of a temporary restraining order.

Subsection 3 of 28 U.S.C. 2284 provides:

> "In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted."

It appears from the complaint, the answer and the stipulations that the plaintiffs will suffer irreparable damage, i.e., the denial of the right to vote in the election of November 5, 1968, if a temporary restraining order is not granted. But the ten plaintiffs who were already registered before October 19 are in a different status from the other two plaintiffs who were never registered. Since one of the recognized purposes of a temporary restraining order is to preserve the status quo, the temporary restraining order in this case will issue only as to the ten plaintiffs previously registered.

ORDER

Therefore, it is ORDERED by the United States District Court for the District of Maryland, this 28th day of October, 1968, at 4:00 p.m., that Rose K. Dawson and Marie M.

Garber, Members of the Permanent Board of Registry for Montgomery County, Maryland, be and they are hereby enjoined from removing the names of Tillye Cornman, Herbert Tabor, Celia White Tabor, Mary D. Pratt, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Shultz and Frances Legallais from the voters' registry in Montgomery County until the further order of this court, or from denying them the right to vote at the election on November 5, 1968, and are hereby required to restore to the voters' registry the name of Frances Legallais if it has been removed. This order does not require defendants to register Edward Tabor and Elliot Vesell.

ROSZEL C. THOMSEN,

Chief Judge, U.S. District Court.

OPINION OF COURT

(Filed January 29, 1969)

In The United States District Court
for the District of Maryland

(Caption omitted)

Before WINTER, Circuit Judge, THOMSEN, Chief Judge, United States District Court, and HARVEY, District Judge.

Harvey, District Judge:

In this action brought under the Civil Rights Act,[1] plaintiffs challenge a provision of the Maryland Constitution which they claim has denied them the right to vote. Pursuant to 28 U.S.C. §2281, a three-judge court has properly been convened, and the case has been heard on the pleadings and stipulations of the parties.

All twelve plaintiffs reside on the grounds of the National Institute of Health, a federal reservation located within the geographical boundaries of Montgomery County, Maryland.

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[1] 28 U.S.C. §1343 and 42 U.S.C. §1983.

Ten of the twelve had been registered voters within the State of Maryland for many years until October 19, 1968 when they were advised by the defendants, who are members of the Permanent Board of Registry of Montgomery County, that their names would be removed from the County voters' registry because as residents of federal property they did not qualify for voting in Maryland under the State Constitution. Two of the plaintiffs attempted to register to vote in the general election to be held on November 5, 1968 but were not permitted to do so for the same reasons.

Plaintiffs thereupon filed this action seeking a declaratory judgment and injunctive relief which would prevent the removal from the voters' registry of the names of ten of the plaintiffs and which would require the registration of the other two plaintiffs. Plaintiffs also filed a motion together with affidavits seeking a temporary restraining order and a preliminary injunction. On October 25, 1968, which was one day after the complaint and motion were filed, a hearing was held before this Court. In view of the very short time for preparation on both sides, the Court did not attempt to render a decision on the merits of the case following that hearing. However, pursuant to 28 U.S.C. §2284(3), Chief Judge Thomsen entered an order on October 28, 1968 enjoining the defendants until further order of this Court from removing the names from the voters' registry of the ten plaintiffs who had previously been registered.[2] Such order did not require the defen-

[2] In the memorandum opinion accompanying his order, Judge Thomsen said the following:

> "The case presents a grave constitutional question, on which there appears to be a paucity of authority. The decision of the question will require careful consideration and will probably affect many persons, because of the number of federal reservations within the State of Maryland. Of necessity, the case was presented to the court with minimal opportunity for preparation by counsel or by the judges. Since the case was heard on complaint, answer and stipulations, a final judgment can be entered at any time, but there will be no adequate opportunity before the election on November 5 for the study and conference which the importance of the case requires."

dants to register the other two plaintiffs. Following the submission of briefs, another hearing before the Court was held on January 2, 1969 at which time the case was fully argued on the merits. Additional stipulations have likewise been filed.

The provision of the Maryland Constitution under attack is Article I, §1, which gives the right to vote to every citizen of the United States of the age of 21 years or more "who has been a resident of the state for one year, and of * * * the county, in which he may offer to vote, for six months next preceding the election, * * *". In *Royer v. Board of Election Supervisors*, 231 Md. 561 (1963), cert. den. 375 U.S. 921 (1963), the Court of Appeals of Maryland held that residents of a federal enclave located within the State of Maryland are not residents of the State for the purposes of voting. Plaintiffs claim that as so construed, §1 of Article 2 of the Maryland Constitution denies them the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. For the reasons hereafter stated, we agree.

Under Article I, section 8, clause 17 of the United States Constitution, Congress is empowered to "exercise exclusive Legislation in all Cases whatsoever * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings". Ever since *Opinion of the Justices*, 42 Mass. 580 (1840), and *Sinks v. Reese*, 19 Ohio St. 306 (1869), it has been held in most of the cases considering the question that where the federal government has exclusive jurisdiction of an enclave, persons residing in such enclave are not state residents for voting purposes.[3] The rationale for these decisions was stated by the Court in *Sinks v. Reese* as follows, at page 316:

[3] In the *Royer* case, the Maryland Court of Appeals followed *Lowe v. Lowe*, 150 Md. 592 (1926), which held that a resident of a federal enclave in Cecil County had not acquired a State residence for the purpose of filing a divorce suit. Other state cases reaching the same result as to voting rights are collected in 34 A.L.R. 2d 1193-1202 (1954).

> "By becoming a resident [of the federal enclave], a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relieved from any obligation to contribute to their revenues, and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the states of Indiana or Kentucky, or the District of Columbia."

In the earlier cases, there was little doubt that the United States had exclusive jurisdiction over the enclave in question. However, the issue is presented in a somewhat different light in the pending case as a result of the enactment by Congress of various statutes which have effected a retrocession to Maryland and other states of portions of the federal government's exclusive jurisdiction over federal enclaves and the exercise by Maryland of the powers which Congress has returned to the State.

Where the federal government has exclusive jurisdiction over land located within the geographical boundaries of a state, it can hardly be doubted that no constitutional right of a resident of the enclave is infringed by the state's refusal to grant such resident the right to vote. But it would be equally clear that if there were a retrocession by the federal government to a state of all or substantially all incidents of jurisdiction, such state could not constitutionally deny residents of the enclave the right to vote.[4] The facts of the present case lie somewhere in between these readily demonstrable extremes. The question here is whether Maryland has undertaken to impose on residents

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[4] See *Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States,* Part II (June 1957), pages 221-222. This Committee was formed in 1954 with the approval of President Eisenhower to study the problems arising out of the jurisdictional status of federally owned areas within the several states, which the Department of Justice had found to be "in a confused and chaotic state." Part I, page 2. The Committee noted that there were four categories of legislative jurisdiction over such areas: exclusive jurisdiction, concurrent jurisdiction, partial jurisdiction and proprietorial interest only. A discussion of these four categories may be found at pages 15-22 of Part I of the Report.

of this federal enclave obligations and duties of state citizenship to such a degree that it would amount to unconstitutional discrimination if the right to vote were not likewise granted. Determination of this question requires a balancing of the incidents of jurisdiction still retained by the federal government against those exercised by the State of Maryland as well as consideration of the nature of the right that plaintiffs claim has been denied to them.

Exclusive jurisdiction to lands acquired by the United States for general purposes was ceded by the State of Maryland to the federal government by virtue of Chapter 743 of the Acts of 1906, now codified as §§31, 36 and 37 of Article 96 of the Annotated Code of Maryland (1964 Repl. Vol.). Specific consent was given for the acquisition of the grounds of the National Institute of Health in Montgomery County by §34 of Article 96. Both §34 and §36 provide that the State shall retain the right to serve on the federal lands civil and criminal process of the courts of the State.[5]

The first of a series of enactments returning to the states portions of the federal government's exclusive jurisdiction over enclaves was passed by Congress in 1928. In that year, a statute was enacted which provided that in the case of the wrongful death of any person on a federal enclave, the same right of action would exist as though the place were under the jurisdiction of the state within whose exterior boundaries the place was. 16 U.S.C. §457. In 1936, Congress authorized the states to extend to such areas their workmen's compensation laws. 40 U.S.C. §290. In that same year, the Lea Act was passed which permitted the levying of gasoline and other motor vehicle fuel taxes upon fuels sold in federal enclaves. 4 U.S.C. §104.

In 1939, jurisdiction was returned to the states to enforce their unemployment insurance laws within the borders of federal lands. 26 U.S.C. §3305(d). The most extensive

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[5] The reservation of this right has been seen as an act of comity and not inconsistent with the exclusive jurisdiction of the federal government. *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 534 (1885).

and far reaching retrocession statute enacted by Congress was the Buck Act in 1940. 4 U.S.C. §§105-110. That enactment gave the states "full jurisdiction and power" to levy and collect sales, use and income taxes within federal enclaves. A 1947 enactment permitted the states to tax a lessee's interest in real estate leased by the federal government from within an enclave. 10 U.S.C. §2667(e).

Under the Assimilative Crimes Act, 18 U.S.C. §13,[6] the criminal laws of the states are applicable to federal enclaves, if the act or omission is not punishable by a Congressional statute. A 1948 amendment of this Act provides that the state law in force at the time of the act or omission governs if there is no pertinent federal law, eliminating the previous requirement of periodic re-enactments of the Act to keep abreast of changes in state penal laws. In 1950, Congress provided for payments by the federal government to local schools for the children of residents of federal reservations attending such schools. 20 U.S.C. §236 et seq.[7]

The Maryland Legislature, although not granting residents of federal enclaves within the State the right to vote, has conferred other benefits of State citizenship on such individuals. Following the decision of the Court of Appeals in *Lowe v. Lowe, supra,* the Legislature in 1927 permitted residents of federal enclaves to use the State courts for divorce matters. §23 of Article 16, Annotated Code of Maryland (1957 Ed.). Later it opened the State courts to such residents for adoption proceedings. §69, Article 16. Children of such residents are permitted to attend school in the counties in which are located the reservations where they live.

This cataloguing of State and federal enactments indicates that the concept of exclusive federal jurisdiction over

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[6] The first Assimilative Crimes Act was enacted in 1825 and has been amended on several occasions since then. See *Report of the Interdepartmental Committee,* Part II, pages 126-131.

[7] It should further be noted that plaintiffs are counted as residents of Maryland under the decennial census. Therefore, Maryland's apportionment of seats in the United States House of Representatives is based on a population figure which includes them.

reservations such as the one here involved has been drastically altered within the past 40 years. The plaintiffs here may be prosecuted under State criminal statutes, are subject to State unemployment and workmen's compensation laws, and have access to the State courts under acts permitting divorce and adoption proceedings. However, they have no voice in the selection of legislators who may amend these statutes or enact new ones which will affect their rights as to these matters. The children of these plaintiffs attend local schools in Montgomery County. Yet their parents have no voice in the selection of members of the school board. Income, sales and gasoline taxes are undeniably major sources of revenue for the State of Maryland. Although the plaintiffs here are compelled to pay such taxes, they may not participate in the election of the legislators responsible for the enactment of tax statutes within the State.

The rationale of the earlier decisions denying the right to vote to a resident of a federal enclave has been undercut by the various retrocessions by Congress of its otherwise exclusive jurisdiction. No longer is it true, as stated in *Sinks v. Reese, supra*, 19 Ohio St. at 401, that such a resident "is relieved from any obligation to contribute to [a state's] revenues and is subject to none of the burdens which she imposes upon her citizens." Nor is there validity today to the statements made by the Maryland Court of Appeals in 1926 in *Lowe v. Lowe, supra*, that such residents "are not residents of the State of Maryland * * * for taxation purposes" and that "the federal government has complete and exclusive jurisdiction and power of legislation" over a federal reservation within the State. 150 Md. at pages 600-601.

The theory of the extraterritoriality of a federal enclave was impliedly rejected by the Supreme Court in *Howard v. Commissioners of Louisville*, 344 U.S. 624 (1953). In that case, the issue was whether the City of Louisville could lawfully annex a federal enclave on which was located a Naval Ordnance Plant. The trial court had con-

cluded that since the federal government had exclusive jurisdiction over the reservation, it was no longer a part of the State of Kentucky, subject to annexation. The Court of Appeals of Kentucky reversed. *Commissioners of Sinking Fund v. Howard*, 248 S.W. 2d 340 (Ky. 1952). In affirming that decision, the United States Supreme Court said the following (344 U.S. at 626-627):

> "A state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. *The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government.* The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aims. It is friction, not fiction to which we must give heed." (Emphasis added.)

The State of Maryland here argues that since substantial portions of the federal government's exclusive jurisdiction over this land is still retained by the United States, the State is constitutionally justified in declining to permit plaintiffs to vote. In particular, it is noted that the plaintiffs pay no property taxes,[8] that they are exempt from personal service as a part of the State's unorganized militia, that their children are not subject to State compulsory education laws and that they are exempt from State jury service. That the federal government still retains wide authority over this federal enclave does not answer the

[8] Property taxes account for about 50% of the operating budget of the Montgomery County Board of Education and about 12% of the operating budget of the County itself.

question before the Court, for it is likewise clear that in the aggregate the jurisdiction over plaintiffs that has been returned to Maryland is extensive. We are not concerned here with Maryland's refusal to grant to residents of a federal enclave ordinary rights and privileges given to other citizens of the State. The question before the Court is whether the State can constitutionally withhold from these plaintiffs a right as vital as the right to vote.

Exercise of the elective franchise has always been considered one of the most basic of those rights enjoyed by a citizen of a free democratic society. In *Carrington v. Rash*, 380 U.S. 89 (1965), the Supreme Court had before it a challenge to a provision of the Texas Constitution which prohibited from voting in State elections any member of the armed forces moving to Texas during his tour of duty. In finding that such a prohibition was an invidious discrimination in violation of the Fourteenth Amendment, the Court said the following at page 96:

> "We deal here with matters close to the core of our constitutional system. 'The right . . . to choose,' *United States v. Classic*, 313 U.S. 299, 314, that this Court has been so zealous to protect, means, at the least, that States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State. *Oyama v. California*, 332 U.S. 633."

In the more recent case of *Williams v. Rhodes*, 393 U.S. 23, (decided October 15, 1968), the Court reaffirmed its statement in *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964), in which it said the following with reference to the right to vote (at page 31):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined,".

We conclude that on balance the plaintiffs here are treated by the State of Maryland as state residents to such

an extent that it is a violation of the Fourteenth Amendment for the State to deny them the right to vote. A state may not subject an individual who resides within its geographical boundaries to substantial obligations of citizenship and at the same time deny such individual the correlative right to exercise a voice in defining the nature and extent of such obligations. It is no answer to say that there are many rights and obligations of citizens of Maryland which are not enjoyed by or have not been assumed by these plaintiffs. Without determining which way the scales would tip with respect to other rights, we are of the opinion that the incidents of jurisdiction exercised by Maryland over these plaintiffs are sufficiently weighty that the important right claim here cannot be constitutionally denied.

Similar reasoning was employed by the Court in *Arapajolu v. McMenamin*, 113 Cal. App. 2d 824, 249 P. 2d 318, 34 A.L.R. 2d 1185 (1952),[9] a decision of the California District Court of Appeal, review of which was denied by the Supreme Court of California. In finding that a resident of a federal enclave located within the state of California was a resident of the state entitled to vote, the court said the following (34 A.L.R. 2d at 1191-1192):

> "The jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution."

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[9] Two other state courts have likewise held residents of a federal enclave to be residents of the state for voting purposes. *Adams v. Landree*, 139 W. Va. 748, 83 S.E. 2d 127 (1954) and *Rothfels v. Southworth*, 11 Utah 2d 169, 356 P. 2d 612 (1960).

For the reasons stated, plaintiffs are entitled to the relief that they are seeking. Counsel should prepare and submit within ten days an appropriate order.

HARRISON L. WINTER,
United States Circuit Judge.

ROSZEL C. THOMSEN,
Chief Judge, United States District Court.

ALEXANDER HARVEY, II,
United States District Judge.

February 19, 1969

Richard Schifter, Esq.
1700 K Street, N.W.
Washington, D. C. 20006

George W. Liebmann, Esq.
Assistant Attorney General
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Re: Cornman v. Dawson — Civil No. 20028

Gentlemen:

The Court has received and has considered the proposed orders submitted by each of you with reference to the above case.

All three judges have concluded than an order should be entered in this case in the form submitted by Mr. Schifter. Such Order was signed and filed with the Clerk today.

I might add that there is nothing in the Order to prevent the State from filing a notice of appeal or from pursuing whatever other rights it may have in this case. We agreed upon Mr. Schifter's form of order so that the plaintiffs would not be prevented from voting this fall if there is a special election.

Very truly yours,

ALEXANDER HARVEY, II,
United States District Judge.

ORDER

(Filed February 19, 1969)

United States District Court for the District of Maryland

(caption omitted)

In accordance with the opinion of the United States District Court for the District of Maryland, dated 29th January 1969:

It is hereby ORDERED by the United States District Court for the District of Maryland, this ..... day of February, 1969 that Rose K. Dawson and Marie M. Garber, Members of the Permanent Board of Registry for Montgomery County, Maryland, be and they hereby are permanently enjoined from removing the names of Tillye Cornman, Herbert Tabor, Celia White Tabor, Mary D. Pratt, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Schultz and Frances Legallais from the voters' registry in Montgomery County as long as such removal is based on the contention that their residence on the NIH enclave does not constitute residence in the State of Maryland; and Rose K. Dawson and Marie M. Garber are further ordered to cease and desist from refusing to place on said voters' registry the names of Edward Tabor and Elliot Vesell on the ground that their residence on the NIH enclave does not constitute residence in the State of Maryland.

HARRISON L. WINTER,

United States Circuit Judge.

ROSZEL C. THOMSEN,

Chief Judge, United States District Court.

ALEXANDER HARVEY, II,

United States District Judge.

APPENDIX B

MOTION TO INTERVENE

(Filed March 17, 1969)

In The United States District Court
for the District of Maryland

(caption omitted)

Francis B. Burch, Attorney General of Maryland, and Wm. Evans, Marshall W. Jones, Jr., and Betty M. Silbert, Members of the Board of Supervisors of Elections of Baltimore City move pursuant to Rules 24 (a) (2) and 24 (b) (1) and (2) of the Federal Rules of Civil Procedure, to intervene as parties defendant in this action and for reasons state:

1. At the request of the attorney for the Montgomery County Board of Elections, the office of the Attorney General of Maryland participated in the defense of this cause from its inception and has for all effective purposes participated in this litigation to the same or a greater extent than a party thereto.

2. In its opinion granting temporary relief dated October 28, 1968, the Court took note of the participation of the office of the Attorney General of Maryland and also noted that notice had been given to the Attorney General of Maryland pursuant to the provisions of 28 U.S.C.A., Section 2284 (2).

3. The office of the Attorney General of Maryland represented defendants at the final hearing and prepared defendants' brief.

4. By the provisions of Article 32A, Section 2 of the Code of Public General Laws of Maryland, the Attorney General of Maryland is designated as the legal advisor and representative to all "boards, commissions, departments, officers or institutions of the State government" including the Secretary of State of Maryland but not including the county boards of elections, and by the same section, the Attorney General of Maryland is designated as "the legal

advisor and representative of" the Board of Supervisors of Elections of Baltimore City.

5. The decision of this Court in the instant case relates to a subject of general importance to all sub-divisions of the State, including Baltimore City, in which federal reservations are situated. Several Federal reservations under the exclusive jurisdiction of the federal government, including some with a substantial number of residents, exist within Baltimore City. The decision of the Court is in direct conflict with the decision of the Maryland Court of Appeals in the case of *Royer v. Board of Election Supervisors*, 231 Md. 561 (1963). Resolution by the Supreme Court of the conflict between these decisions is desirable in order to clarify the law applicable in this State and throughout the Nation with respect to the voting rights of residents of federal reservations and in order to permit the Attorney General of Maryland to accurately advise State agencies, including the Board of Supervisors of Elections of Baltimore City, as to the controlling law. The interest of uniformity in application throughout the State likewise appears to demand that pending decision by the Supreme Court of the United States, the Attorney General of Maryland be a party to and bound by the decision of the District Court.

6. The Attorney General of Maryland has been advised that counsel for the defendants, members of the Board of Supervisors of Elections of Montgomery County, do not intend to appeal this judgment. The Attorney General of Maryland has, however, been further advised, and is authorized to advise this Honorable Court, that neither counsel for the Board of Supervisors of Elections of Montgomery County, nor counsel for plaintiffs, have any objection to the intervention as a defendant of the Attorney General for the purpose of prosecuting an appeal. By reason of his position as legal advisor to State agencies, and his position as attorney for the Board of Supervisors of Elections of Baltimore City, the Attorney General of Maryland possesses an interest related to the subject matter of the action such that the disposition of the action may as a practical

matter impair or impede his ability to protect that interest within the meaning of Rule 24 (a) (2); and that the Board of Supervisors of Elections of Baltimore City possesses a similar interest. It is clear that by reason of the intention of counsel for the Montgomery County Board of Elections not to appeal that the Attorney General's interest and that of the Board of Supervisors of Elections of Baltimore City are not adequately represented by existing parties.

7. The positions of the Attorney General of Maryland and the Board of Supervisors of Elections of Baltimore City are identical to the position of the Board of Supervisors of Elections of Montgomery County in relation to this action, in that both assert by way of defense that the provisions of Article I, Section 1 of the Maryland Constitution are valid and constitutional and bar the relief sought by the plaintiffs. The defenses of the Attorney General and Baltimore City Board as intervening parties defendant thus have a question of law or fact in common with that of the named defendants in this action within the meaning of Rule 24 (b) (2). Since no stay has been granted by this Court, allowance of intervention will not delay the adjudication of the rights of the original parties.

8. The Attorney General possesses a conditional right to intervene under the terms of 28 U.S.C.A., Section 2284 (2) within the meaning of Rule 24 (b) (1).

9. The Motion to Intervene is timely, the Attorney General of Maryland having been invited to participate in this litigation at its inception as co-counsel by counsel for defendants, no formal intervention being necessary at that time, and not having been advised by counsel for defendants of their intention not to appeal until filing of this Court's opinion and entry of decree.

Wherefore, Francis B. Burch as Attorney General of Maryland and as legal representative of the Board of Supervisors of Elections of Baltimore City moves that the members of the Board of Supervisors of Elections of Baltimore City and the Attorney General of Maryland be granted

leave to intervene as parties defendant in the above entitled action and be granted leave to file the annexed Answer.

FRANCIS B. BURCH,
Attorney General of Maryland and Attorney for the Board of Supervisors of Elections of Baltimore City,

ROBERT F. SWEENEY,
Deputy Attorney General,

GEORGE W. LIEBMANN,
Assistant Attorney General.

Carl Lee Frederick, Jr.
Attorney at Law
Equitable Savings Building
11501 Georgia Avenue
Wheaton, Maryland 20902

March 5, 1969

Honorable Alexander Harvey, II
Judge, United States District Court
Fayette & Calvert Streets
Baltimore, Maryland 21202

Re: Corman, et al v. Dawson, et al
Civil No. 20028

Dear Judge Harvey:

At the request of the Attorney General for the State of Maryland, I am writing this letter to advise the Court that the Defendants in the above captioned cause, Rose K. Dawson and Marie M. Garber, have no objection to the Attorney General intervening as a party Defendant in Civil No. 20028.

Your consideration in this matter is sincerely appreciated.

Very truly yours,

CARL LEE FREDERICK, JR.,

Attorney for Defendants,
Rose K. Dawson and
Marie M. Garber.

ORDER

(Filed April 10, 1969)

In The United States District Court
for the District of Maryland

(caption omitted)

Upon the Motion To Intervene filed by Francis B. Burch, Attorney General of Maryland, and William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, members of the Board of Supervisors of Elections of Baltimore City on March 17, 1969; and no objection having been filed thereto; and after consultation and approval of this Order by all three of the Judges sitting in this case, it is

ORDERED this 10th day of April, 1969, that leave be granted the said Francis B. Burch, Attorney General of Maryland, and the said William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, members of the Board of Supervisors of Elections of Baltimore City, to intervene as parties defendant in this action and to file the Answer annexed to the Motion To Intervene.

ALEXANDER HARVEY, II,

United States District Judge.